HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

C.R. No.2979 of 1989

Date of decision : 07.02.2007

Milkha Singh .....Petitioner

versus

Bhrat Paul ....Respondent

CORAM : HON'BLE MR. JUSTICE HEMANT GUPTA.

Present : Mr.Harsh Bhargav, Advocate for the petitioner.

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ORDER

HEMANT GUPTA, J.

The challenge in the present revision petition by the decree holder is to the order dated 12.6.1989 passed by the learned Executing Court whereby the Execution petition was dismissed.

The petitioner filed a suit for recovery of Rs.12,450/- on or about 26.4.1986. The said suit was decreed on 4.3.1987 in a sum of Rs.8300/- with future interest @ 6% per annum from the date of judgment till its realization. The petitioner filed an Execution petition for recovery of an amount of Rs.9,341.60. The judgment debtor filed an application alleging therein that Rs.5000/- was paid on 23.4.1982 and the said amount is required to be adjusted.

The learned Executing Court found that the judgment debtor has made the payment of Rs.5000/- vide receipt dated 23.4.1982, Exhibit D-1 and that such amount has not been adjusted and thus, nothing remains to be paid by the judgment debtor.

Learned counsel for the petitioner has vehemently argued that the receipt dated 23.4.1982 was never relied upon by the judgment debtor

in the suit which led to passing of the decree on 4.3.1987. Therefore, the learned Executing Court could not have taken into consideration the said receipt as payment of the decretal amount.

It is apparent that the receipt dated 23.4.1982 pertains to the period prior to the date of filing of the suit. The respondent has not relied upon such receipt in the suit. Having failed to rely upon the said receipt during the course of proceedings in the suit, it is not open to the respondent to rely upon such receipt in execution proceedings. Reliance on the said receipt is an after thought and, therefore, unreliable and untenable. Any payment made prior to filing of the suit was required to be claimed by the defendant in his written statement. Having failed to do so, such an objection cannot be raised in execution petition.

Consequently, the order passed by the learned Executing Court suffers from patent illegality and irregularity and the same is set-aside.

The revision petition stands allowed.

(HEMANT GUPTA)
JUDGE

February 7, 2007
**mohinder*